HOUSE BILL No. 1296

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-51-2.

Synopsis: Motor vehicle tort claims action. Provides that a governmental entity may be held liable for a tort claim involving the negligent operation of a motor vehicle if the claimant's contributory fault is 40% or less. Makes conforming amendments.

Effective: July 1, 2003.

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January 13, 2003, read first time and referred to Committee on Judiciary.





First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1296

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

vehicle by a governmental entity or public employee.
unless the tort claim alleges the negligent operation of a motor
public employees under IC 34-13-3 (or IC 34-4-16.5 before its repeal
apply in any manner to tort claims against governmental entities of
FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. This chapter does no
SECTION 1. IC 34-51-2-2 IS AMENDED TO READ AS

SECTION 2. IC 34-51-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) In an action based on fault that is brought against:

- (1) one (1) defendant; or
- (2) two (2) or more defendants who may be treated as a single party;

the claimant is barred from recovery if the claimant's contributory fault is greater than the fault of all persons whose fault proximately contributed to the claimant's damages. In addition, if the defendant is a governmental entity or public employee in a tort claim brought under IC 34-13-3 (or IC 34-4-16.5 before its repeal), the claimant



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1	is barred from recovery if the claimant's contributory fault is
2	greater than forty percent (40%).
3	(b) In an action based on fault that is brought against two (2) or
4	more defendants, the claimant is barred from recovery if the claimant's
5	contributory fault is greater than the fault of all persons whose fault
6	proximately contributed to the claimant's damages. In addition, if one
7	(1) or more defendants are governmental entities or public
8	employees in a tort claim brought under IC 34-13-3 (or
9	IC 34-4-16.5 before its repeal), the claimant is barred from
10	recovery from the governmental entity or public employee if the
11	claimant's contributory fault is greater than forty percent (40%).
12	SECTION 3. IC 34-51-2-7 IS AMENDED TO READ AS
13	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section
14	applies to an action based on fault that is:
15	(1) not a tort claim (in whole or in part) brought under
16	IC 34-13-3 (or IC 34-4-16.5 before its repeal);
17	(2) brought against one (1) defendant or two (2) or more
18	defendants who may be treated as a single party; and
19	(2) (3) tried to a jury.
20	(b) The court, unless all the parties agree otherwise, shall instruct
21	the jury to determine its verdict in the following manner:
22	(1) The jury shall determine the percentage of fault of the
23	claimant, of the defendant, and of any person who is a nonparty.
24	The jury may not be informed of any immunity defense that is
25	available to a nonparty. In assessing percentage of fault, the jury
26	shall consider the fault of all persons who caused or contributed
27	to cause the alleged injury, death, or damage to property, tangible
28	or intangible, regardless of whether the person was or could have
29	been named as a party. The percentage of fault of parties to the
30	action may total less than one hundred percent (100%) if the jury
31	finds that fault contributing to cause the claimant's loss has also
32	come from a nonparty or nonparties.
33	(2) If the percentage of fault of the claimant is greater than fifty
34	percent (50%) of the total fault involved in the incident which
35	caused the claimant's death, injury, or property damage, the jury
36	shall return a verdict for the defendant and no further deliberation
37	of the jury is required.
38	(3) If the percentage of fault of the claimant is not greater than
39	fifty percent (50%) of the total fault, the jury then shall determine
40	the total amount of damages the claimant would be entitled to
41	recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of the



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1	defendant by the amount of damages determined under
2	subdivision (3) and shall then enter a verdict for the claimant in
3	the amount of the product of that multiplication.
4	SECTION 4. IC 34-51-2-7.5 IS ADDED TO THE INDIANA CODE
5	AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6	1, 2003]: Sec. 7.5. (a) This section applies to an action based on
7	fault that is:
8	(1) a tort claim brought under IC 34-13-3 (or IC 34-4-16.5
9	before its repeal);
10	(2) brought against one (1) defendant or two (2) or more
11	defendants who are governmental entities or public employees
12	and who may be treated as a single party; and
13	(3) tried to a jury.
14	(b) The court, unless all the parties agree otherwise, shall
15	instruct the jury to determine its verdict in the following manner:
16	(1) The jury shall determine the percentage of fault of the
17	claimant, of the defendant, and of any person who is a
18	nonparty. The jury may not be informed of any immunity
19	defense that is available to a nonparty. In assessing
20	percentage of fault, the jury shall consider the fault of all
21	persons who caused or contributed to cause the alleged injury,
22	death, or damage to property, tangible or intangible,
23	regardless of whether the person was or could have been
24	named as a party. The percentage of fault of parties to the
25	action may total less than one hundred percent (100%) if the
26	jury finds that fault contributing to cause the claimant's loss
27	has also come from a nonparty or nonparties.
28	(2) If the percentage of fault of the claimant is greater than
29	forty percent (40%) of the total fault involved in the incident
30	that caused the claimant's death, injury, or property damage,
31	the jury shall return a verdict for the defendant, and no
32	further deliberation of the jury is required.
33	(3) If the percentage of fault of the claimant is not greater
34	than forty percent (40%) of the total fault, the jury shall
35	determine the total amount of damages the claimant would be
36	entitled to recover if contributory fault were disregarded.
37	(4) The jury shall multiply the percentage of fault of the
38	defendant by the amount of damages determined under
39	subdivision (3) and enter a verdict for the claimant in the
40	amount of the product.
41	SECTION 5. IC 34-51-2-8 IS AMENDED TO READ AS
42	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section



1	applies to an action based on fault that:
2	(1) is not a tort claim (in whole or in part) brought under
3	IC 34-13-3 (or IC 34-4-16.5 before its repeal);
4	(2) is brought against two (2) or more defendants; and
5	(2) (3) is tried to a jury.
6	(b) The court, unless all the parties agree otherwise, shall instruc
7	the jury to determine its verdict in the following manner:
8	(1) The jury shall determine the percentage of fault of the
9	claimant, of the defendants, and of any person who is a nonparty
0	The jury may not be informed of any immunity defense that migh
1	be available to a nonparty. In assessing percentage of fault, the
2	jury shall consider the fault of all persons who caused of
3	contributed to cause the alleged injury, death, or damage to
4	property, tangible or intangible, regardless of whether the person
5	was or could have been named as a party. The percentage of faul
6	of parties to the action may total less than one hundred percen
7	(100%) if the jury finds that fault contributing to cause the
8	claimant's loss has also come from a nonparty or nonparties.
9	(2) If the percentage of fault of the claimant is greater than fifty
.0	percent (50%) of the total fault involved in the incident which
1	caused the claimant's death, injury, or property damage, the jury
2	shall return a verdict for the defendants, and no further
3	deliberation of the jury is required.
4	(3) If the percentage of fault of the claimant is not greater than
5	fifty percent (50%) of the total fault, the jury shall then determine
6	the total amount of damages the claimant would be entitled to
7	recover if contributory fault were disregarded.
8	(4) The jury next shall multiply the percentage of fault of each
9	defendant by the amount of damages determined unde
0	subdivision (3) and shall enter a verdict against each defendan
1	(and such other defendants as are liable with the defendant by
2	reason of their relationship to a defendant) in the amount of the
3	product of the multiplication of each defendant's percentage o
4	fault times the amount of damages as determined under
5	subdivision (3). SECTION 6. IC 34-51-2-8.5 IS ADDED TO THE INDIANA CODE
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7	AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8	1, 2003]: Sec. 8.5. (a) This section applies to an action based or fault that:
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·0 ·1	(1) is a tort claim (in whole or in part) brought under IC 34-13-3 (or IC 34-4-16.5 before its repeal);
2	(2) is brought against two (2) or more defendants; and
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1	(3) is tried to a jury.
2	(b) The court, unless all the parties agree otherwise, shall
3	instruct the jury to determine its verdict in the following manner:
4	(1) The jury shall determine the percentage of fault of the
5	claimant, of the defendants, and of any person who is a
6	nonparty. The jury may not be informed of any immunity
7	defense that might be available to a nonparty. In assessing
8	percentage of fault, the jury shall consider the fault of all
9	persons who caused or contributed to cause the alleged injury,
10	death, or damage to property, tangible or intangible,
11	regardless of whether the person was or could have been
12	named as a party. The percentage of fault of parties to the
13	action may total less than one hundred percent (100%) if the
14	jury finds that fault contributing to cause the claimant's loss
15	has also come from a nonparty or nonparties.
16	(2) If the percentage of fault of the claimant is greater than
17	fifty percent (50%) of the total fault involved in the incident
18	that caused the claimant's death, injury, or property damage,
19	the jury shall return a verdict for the defendants, and no
20	further deliberation of the jury is required.
21	(3) If the percentage of fault of the claimant is greater than
22	forty percent (40%) of the total fault involved in the incident
23	that caused the claimant's death, injury, or property damage,
24	the jury shall return a verdict for the defendant who is a
25	governmental entity or public employee.
26	(4) If the percentage of fault of the claimant is not greater
27	than fifty percent (50%) of the total fault, the jury shall
28	determine the total amount of damages the claimant would be
29	entitled to recover if contributory fault were disregarded.
30	(5) The jury shall multiply the percentage of fault of each
31	defendant by the amount of damages determined under
32	subdivision (4) and enter a verdict against each defendant
33	(and such other defendants as are liable with the defendant by
34	reason of their relationship to a defendant) in the amount of
35	the product of the multiplication of each defendant's
36	percentage of fault times the amount of damages determined
37 38	under subdivision (4). SECTION 7. IC 34-51-2-9 IS AMENDED TO READ AS
39	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. In an action based on
40	fault that is tried by the court without a jury, the court shall make its
40	raunt that is thed by the court without a jury, the court shall make its

award of damages according to the principles specified for juries in

sections 7, 7.5, and 8, and 8.5 of this chapter.



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